



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████, Respondent

DECISION

Case #: FOF - 174527

Pursuant to petition filed May 20, 2016, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Tuesday, August 16, 2016 at 01:00 PM at , Wisconsin.

The issue for determination is whether the respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Office of the Inspector General
Department of Health Services
PO Box 309
Madison, WI 53701

By: ██████████, PARIS Agent

Respondent:

██████████
██████████
██████████

█

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. The Respondent (CARES # ██████████) received FoodShare benefits from January 7, 2014, through November 11, 2014. (Exhibit 5).

2. On January 6, 2014, the Respondent completed an ACCESS Six Month Report Form (SMRF), in which she indicated her daughter, ■■■, lived with her. The Respondent electronically signed the SMRF, certifying under penalty of perjury that the information she provided was correct and complete. (Exhibit 3)
3. On June 19, 2014, the Respondent completed an ACCESS renewal, in which she indicated that she was still living with ■■■. The renewal contained a penalty warning, advising the Respondent that she could be disqualified from the FoodShare program if she provided false information. The Respondent electronically signed the renewal, indicating that she understood the penalties for giving false information or breaking the rules. (Exhibit 4)
4. On June 1, 2016, the Office of Inspector General prepared an Administrative Disqualification Hearing Notice alleging that the Petitioner provided false information to receive FoodShare benefits to which she was not entitled (Exhibit 1).

DISCUSSION

What is an Intentional Program Violation?

An intentional program violation of the FoodShare program occurs when a recipient intentionally does the following:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts;
or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

7 C.F.R. § 273.16(c); *see also* Wis. Stat. §§ 946.92(2).

The Department's written policy restates federal law, below:

3.14.1 IPV Disqualification

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

What is the Agency's Burden of Proof?

In order for the agency to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence" used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases.

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that "yes" should be the answer because of its greater weight and clear convincing power. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the "middle burden." The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that "it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable." 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt the Respondent committed an IPV.

The Merits of the Agency's Case

In the case at hand, OIG asserts that the Respondent committed an intentional program by lying in her January 2014 SMRF and in her June 2014 renewal. Specifically, it is alleged that the Respondent lied about her daughter, ■■■ being in her household. It is OIG's contention that the daughter had been living in the State of Washington.

At the hearing, OIG provided documentation from the State of Washington indicating that ■■■ received food stamps in Washington during the entirety of 2014 and that she had given birth in the State of Washington in 2014. The Respondent did not contest OIG's allegations, stating that she did not want to offer any testimony on her own behalf and that she just wanted to set up a payment plan to repay the misused benefits.

Accordingly, it is found that the Petitioner violated the rules of the FoodShare program by lying in her January 2014 SMRF and in her June 2014 Renewal when she claimed ■■■ was living with her.

The question of intent is generally one to be determined by the trier of fact. State v. Lossman, 118 Wis.2d 526 (1984). There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See John F. Jelke Co. v. Beck, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. However, intention is a subjective state of mind to be determined upon all the facts. Lecus v. American Mut. Ins. Co. of Boston, 81 Wis.2d 183 (1977).

There is nothing in the record to rebut the presumption that the Respondent, intentionally lied about ■■■'s presence in her home, in order to receive more FoodShare benefits than she was otherwise entitled to receive. On the contrary, the January 2014 SMRF indicated that the Respondent would be committing perjury if she lied and The Respondent's June 2014 renewal warned her about the consequences of providing false information, including disqualification from the FoodShare program, but the Respondent lied about ■■■, anyway.

CONCLUSIONS OF LAW

1. The Respondent violated, and intended to violate, the FS program rule prohibiting applicants from providing false information.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the Respondent.

NOW, THEREFORE, it is

ORDERED

That the petitioner's determination is sustained, and that OIG may make a finding that the Respondent committed a first IPV of the FoodShare program and disqualify the Respondent from the program for one year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good

cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

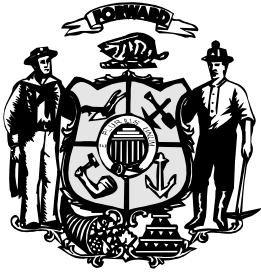
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of August, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Office of the Inspector General - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
[REDACTED] - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 22, 2016.

Office of the Inspector General
Public Assistance Collection Unit
Division of Health Care Access and Accountability
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